

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 16, 2004**

**IN RE:**

**PETITION FOR APPROVAL OF  
AMENDMENT TO THE INTERCONNECTION  
AGREEMENT BETWEEN BELL SOUTH  
TELECOMMUNICATIONS, INC. AND  
DIECA COMMUNICATIONS, INC. D/B/A  
COVAD COMMUNICATIONS COMPANY**

**DOCKET NO.  
04-00207**

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**ORDER APPROVING FIFTH AMENDMENT  
TO THE INTERCONNECTION AGREEMENT**

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This matter came before Chairman Pat Miller, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 30, 2004, to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the fifth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and DIECA Communications, Inc. d/b/a Covad Communications Company.

The original interconnection agreement between these parties was filed on February 12, 2002, in Docket No. 00-01130. It was approved at a regularly scheduled Authority Conference on April 30, 2002. The first set of amendments was filed on May 20, 2002, under Docket No. 02-00585, and was approved at a regularly scheduled Authority Conference on July 23, 2002. The second set of amendments was filed on January 29, 2003, under Docket No. 03-00077, and was approved at a regularly scheduled Authority Conference on March 17, 2003. The third amendment was filed on July 9, 2003, under Docket No. 03-00433 and was approved at a regularly scheduled

Authority Conference on August 18, 2003. The fourth amendment was filed on May 17, 2004, under Docket No. 04-00143 and was approved at a regularly scheduled Authority Conference on July 26, 2004. The fifth amendment, which is the subject of this docket, was filed on July 14, 2004.

Based upon a review of the amendment, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The amendment is in the public interest as it provides consumers with alternative sources of telecommunications services within the service area of BellSouth Telecommunications, Inc.
- 3) The amendment is not discriminatory to telecommunications service providers that are not parties thereto.
- 4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).<sup>1</sup> Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the amendment is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.
- 5) No person or entity has sought to intervene in this docket

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<sup>1</sup> See 47 U.S.C. § 252(e)(2)(B)

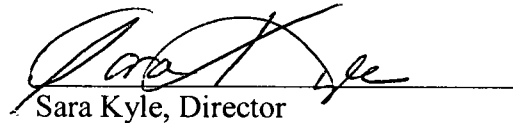
6) The amendment is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

**IT IS THEREFORE ORDERED THAT:**

The Petition is granted, and the fifth amendment to the interconnection agreement negotiated between BellSouth Telecommunications, Inc. and DIECA Communications, Inc. d/b/a Covad Communications Company is approved and is subject to the review of the Authority as provided herein.



Pat Miller, Chairman



Sara Kyle, Director



Ron Jones, Director